85-1740

No. .....

Supreme Court, U.S.
FILED
MAR 31 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

RICHARD A. KANANEN
MARILYN T. KANANEN

Petitioners,

vs.

SUN BANK OKEECHOBEE F/K/A
COMMERCIAL BANK OKEECHOBEE, FLORIDA
SUN BANK N.A.
SUN BANK, INC.

Respondent.

PETITION FOR A WRIT CERTIORARI TO SUPREME COURT STATE OF FLORIDA FOURTH DISTRICT COURT OF APPEAL; STATE OF FLORIDA

Richard Kananen
Marilyn Kananen
Attorney's pro-se
7611 Alachua Street
Orlando, Florida 32822
(305) 281-0594

COMET PPESS LAW BRIEFS (305) 273-8867

IN THE

SUPREME COURT OF THE UNITED STATES

QUESTIONS PRESENTED FOR REVIEW

1. Are these actions constitutional?

Is it just for the lower Court to change appellants' motion writ of error/mandamus of which they had original jurisdiction to a motion of re-instatement which the appellants could not convey jurisdiction.

2. Does this constitute due process and equal protection?

The lower Court closed its doors to the administration of justice in the face of a timely motion.

3. Is this due process and equal protection?

The lower Court completely disregarded competent valid evidence proving the appellee's case relies on forged promissory notes to the detriment of the appellants.[1]

4. Can these actions withstand the Constitutional mandates?

The lower Court ignored valid evidence of cancelled checks showing the appellants have made legal payments for two of the four months sued for, July 1983, and August 1983, by the Court's actions they are compelling the appellants to pay twice.[2]

5. Is this just under the 5th and 14th Amendments?

Is it fair for the lower Courts to ignore pertinent evidence as to

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[1]Barnes v. Boulevard; Baum v. Spector; Ferris v. Nichols; St. Clair v. Smith; F.R.C.P. 1.510 Pg. 382, R70.

[2]Barnes v. Boulevard; Baum v. Spector; Ferris v. Nichols; St. Clair v. Smith; F.R.C.P. 1.510 Pg. 382, R70.

why checks for two payments were returned to appellants.[3]

6. Does this follow the principals of the 5th and 14th Amendments?

The lower Court refused to address themselves to the fact that appellants are entirely excused from the September 1983, and October 1983 payments.[4]

7. Is it fair under the mandates of the Constitution?

The lower Court completely ignored evidence in the record identified as an original promissory note which has been clearly shown to be a copy of a copy and a forgery.[5]

8. Is this due process and equal protection?

The lower Court ignored competent evidence supplied by a bank examiner that the original promissory note was pink in color which appellants proved is no longer part of the record.[6]

9. Are these actions allowable under the 5th and 14th Amendments?

The lower Court ignored competent evidence of cancelled checks that prove the late notices sent by the bank were fraudulent — issued merely to harass.

10. Does this follow the mandates of the 5th and 14th Amendments?

Are the actions of the lower Court just in denying appellants the right of redress.[7]

11. Does this constitute equal protection and due process?

The lower Court accepted into evidence transcripts of the depositions that were tampered with.[8]

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[3]673.511 (3)(b)
[4]673.511 (3)(b)
[5]Baum v. Spector; 671.201 (18), 673.307 (2), 673.401(1), 673.404 (1), 673.407 (1) (2a), R70.
[6]A-XII; SCR 42, 42a, 42b.
[7]Shearn v. Orl. Fun. Home, Reshard v. Cappiali.
[8]A-XI.

12. Can these actions be allowed under the 5th and 14th Amendments?

The lower Court ordered the appellants to disclose private financial matters that constitutes an invasion of privacy.[9]

13. Is this equal protection and due process?

The lower Court held a hearing while fully aware that appellant pro-se was hospitalized with a heart condition.

14. Are these actions permissible under the 5th and 14th Amendments?

The lower Court in effect amended plaintiff's complaint to include charges that were not levied in appellee's original complaint as amended and issued summary judgment on its own amendment.[10]

15. Is this just under the 5th and 14th Amendments?

The lower Court repeatedly requested opposing counsel's opinion as to the merits of appellants' motions.

16. Can this action be allowed under the 5th and 14th Amendments?

The lower Court embraced opposing counsel berating appellants for appearing pro-se and included the citation in the order.[11]

17. Can this be allowed under the mandates of the 5th and 14th Amendments?

The lower Court dismissed appellants Counter-claim with prejudice for failing to state a cause of action in the face of numerous causes of action stated in the second amended counterclaim.[12]

18. Does this action constitute due process and equal protection?

The lower Court denied appellants a change of venue when it can be so clearly shown that appellants were faced with a biased, clearly prejudice tribunal.[13]

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[9]Hoogland v. Dollar, Gordon v. Hotel Sevelle Inc.

[10]R9, 37, 41.

[11]A-VII.

[12]Shearn v. Orl. Funeral Home

[13]Fl. Stat. 47.091, chapter 47, pg. 181; State of Fla. ex rel Felix Aguiar Jr. v. Chappell.

19. Is this just under the 5th and 14th Amendments?

By their actions the lower Courts are forcing appellants to adhere to a contractual obligation that no longer exists.[14]

20. Can these actions stand under the mandates of the 7th Amendment?

The lower Court deprived appellants of a trial by jury by issuing summary judgment in favor of the appellee in face of overwhelming evidence of the existence of genuine material factual issues.

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TABLE OF AUTHORITIES

Barnes v. Boulevard I
124 So2d 494

"There is no presumption that a signature appearing upon an instrument is genuine and burden of proving the genuineness of signature is on person who contends it is genuine where person whose name appears in signature has, by sufficient plea, denied that the signature is his."

Baum v. Spector I, II
193 So2d 50

"Suit by holder of negotiable instrument presented genuine issues of material fact respecting forgery of endorsement, agency of broker, failure of consideration and the existence of plaintiff as a holder in due course precluding entry of summary judgment for the payee-endorser."

Cornell v. Sledge [21] [25] 4, 5
306 So2d 194

"The equal protection of the laws provisions of the State and Federal Constitutions require that the rules of procedure and laws generally apply equally to all citizens, whether or not they enjoy a professional status.

Ferris v. Nichols I, IV
245 So 2d 660 3, 4

"Affidavits, to which notes referred to therein were not attached, were insufficient to warrant a summary judgment, in action on note."

"Except in unusual case, where suit is on a lost or destroyed note, the instrument sued on should be produced in order to entitle the holder to recovery."

Gordon v. Hotel Sevelle Inc. [9] III
105 So2d 175

In its entirety
Hoogland v. Dollar III
330 So2d 509

In its entirety
Pollgren v. Morris I, 5
496 F. Supp 1042

In its entirety
Reshard v. Cappiali [7] II
171 So2d 581

In its entirety
St. Clair v. Smith I
445 So2d 1113

"Summary judgment is not substitute for trial, and motion for summary judgment is only to be granted when it is shown that there are no genuine issues of material fact presented in pleadings and other evidence before trial court and that movant is entitled to judgment as a matter of law."

Shearn v. Orlando Funeral Home II, III
88 So2d 591

"'A cause of action' is the right which a party has to institute a judicial proceeding."

State of Fla. ex rel Felix Aguiar Jr. v. Chappell [13] III
Fla. App. 344 So2d 925

"On suggestion for writ of prohibition against judge alleging claims of bias and prejudice, Supreme Court must determine whether realtors have demonstrated legally sufficient fear that they may not receive a fair trial; impartiality of judge must be beyond question."

"The existence of bias or prejudice sufficient to disqualify judge from acting does not depend upon actual state of mind of trial judge, but on feelings that reside in the minds of those who come before the bench."

"Affidavits which uniformly stated that respondent judge had already formed an opinion as to guilt of each of the realtors and has expressed an opinion thereon where sufficient to require judge's disqualification without determining veracity of such claim or other claims alleged by realtors and affiants, since realtors had at least demonstrated actual fear in minds that they would not receive a fair trial."

Tesher v. Rothfield 5
392 So2d 1000

"Trial by jury is an organic right that under no circumstances should be denied."

CONSTITUTIONAL PROVISIONS

AMENDMENT V I, 5

"nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

A. Pollgreen v. Morris; 496 F Supp 1042.

AMENDMENT VII 3, 4, 5

"In suits at common law, where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved.

A. Tesher v. Rothfield, 392 So2d 1000.

AMENDMENT XIV I, 5

"nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

A. Cornell v. Sledge, 306 So2d 194.

STATUTES CITED

Florida Statutes: III
47.091 Chapter 47, page 181:

"An application for a change of venue, based on prejudice of presiding judge against defendant, gave the judge no discretion to hear and determine question of his prejudice, and change of venue must be granted.

State of Fla. ex rel Felix Aguiar Jr. v. Chappell,
Fla. App 344 So2d 925

Florida Rules Civil Procedure 1.510, page 382: I, 5

"The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or by further affidavits."

Barnes v. Boulevard, 124 So2d 494;
Baum v. Spector, 193 So2d 50;
Ferris v. Nichols, 245 So2d 660.

Florida Statutes:
Uniform Commercial Code 671.201 (18) Chapter 671, page 53: II

"'Genuine' means free of forgery or counterfeiting."

Uniform Commercial Code, 673.307 (2) Chapter 673, page 170: II

"When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

Barnes v. Boulevard, 124 So2d 494;
Baum v. Spector, 193 So2d 50;
Ferris v. Nichols, 245 So2d 660.

Uniform Commercial Code 673.401 (1) Chapter 673, page 176: II

"No person is liable on an instrument unless his signature appears thereon."

Barnes v. Boulevard, 124 So2d 494

Uniform Commercial Code 673.404 (1) Chapter 673, page 188: II

"Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it, but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it

for value."

Baum v. Spector, 193 So2d 50;
Ferris v. Nichols, 245 So2d 660

Uniform Commercial Code 673.407 (1c)(2a) Chapter 673, page 201: II

"*Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in: The writing as signed, by adding to it or by removing any part of it.*"

"*As against any person other than a subsequent holder in due course: Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense.*"

Ferris v. Nichols, 245 So2d 660.

Uniform Commercial Code 673.511 (3)(b) Chapter 673, page 297: II, 4

"*Presentment is also entirely excused when: Acceptance of payment is refused but not for want of proper presentment.*"

This case is precedent — No case cited.

IN THE

SUPREME COURT OF THE UNITED STATES

PARTIES TO PROCEEDING

SUNSHINE CHEMICAL & MFG.
RICHARD A. & MARILYN T. KANANEN

v.

SUN BANK OKEECHOBEE F/K/A
COMMERCIAL BANK OKEECHOBEE, FLORIDA
SUN BANK N.A., SUN BANK, INC.

APPENDIX

Enclosed herein, Abbreviations used:
SCR — Supreme Court Record
R — Record
A — Appendix

OPINIONS BELOW

The Courts below offered no opinions. All orders are a flat affirmation per curiam or denial. All orders issued are included in the appendix.

JURISDICTION

(I) The Opinion of the Supreme Court, State of Florida was initially entered on 1-13-86.
(II) A timely motion for rehearing was not allowed 1-24-86.
(III) The opinion of 4DCA, West Palm Beach, Florida was entered 12-18-85.
(IV) A timely motion for rehearing was denied 1-21-86.
(V) The jurisdiction of this Court is invoked under 28 U.S.C. 1651 (a) and 28 U.S.C. 2101 (c).

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[14]Ferris v. Nichols, A-I.

CONSTITUTIONAL PROVISIONS

1. V Amendment of the Constitution of the United States provides in pertinent part:

"nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

A. Pollgreen v. Morris; 496 FSupp.1042.

2. VII Amendment of the Constitution of the United States provides:

"in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

(A) Tesher v. Rothfield, 392 So2d 1000.

3. XIV Amendment of the Constitution of the United States provides in pertinent part:

"nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

(A) Cornell v. Sledge, 306 So2d 194.
Florida Statutes 47.091
Florida Rules Civil Procedure 1.510
Florida Statutes: U.C.C.
671.201(18) 673.307(2) 673.401(1)
673.404(1) 673.407(1c)(2a) 673.511(3)(b)

STATEMENT OF CASE

Appellants were sued December, 1983 for non-payment of a business loan for the months of July, August, September and October, 1983. Summary judgment was issued in favor of appellee March, 1984 on the appellants being late September 1983, a charge which does not appear on the complaint as amended by the

appellees. The appellants presented evidence before the Court of cancelled checks showing that the July and August 1983 payments had been accepted. The appellants also presented a report from a qualified examiner of questioned documents that the copy of the promissory note the bank was relying on was a forgery.[15] Furthermore appellee's motion for summary judgment did not have the affidavits attached.[16]

The appellants in Answer (R57) and Amended Answer (R61) to the original complaint demanded a trial by jury:

"Defendant does not relinquish their rights under the Constitution of the State of Florida and the Constitution of the United States of America a trial by jury."

The Courts did not address themselves to the plea.

The appellants in their appeals in front of the 4DCA raised the questions of equal protection and due process (R280-281). Appellant's Initial Brief: summary: appellants demand rights under Article I, Section II, Article I, Section IX of the Constitution State of Florida and XIV Amendment Constitution of the United States, dealing with due process and equal protection and also trial by jury (R-408). Appellant's initial brief: appellants presents a plea for their constitutional guarantees (R492-494). Appellant's Reply Brief: presented in arguments appellant's pleas for protection under due process and equal protection Constitution State of Florida and Constitution United States of America.

The appellants plea for their rights of equal protection and due process in the Supreme Court State of Florida Jurisdictional Brief (SCR-5).

All the lower Courts ignored the Constitutional provisions. There are no rulings issued from any lower Court addressing the Constitutional questions. The appellants have no other recourse but to seek justice through the Supreme Court of the United States as the doors to the Courts in the State of Florida are closed to the appellants.

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[15]SCR 11, 12, 13.

[16]Ferris v. Nichols

ARGUMENTS

The petitioners pray that this Writ of Certiorari will issue to review the opinions and judgments of the lower Courts under the mandates of the V, VII, XIV Amendments of the Constitution of the United States of America.

The State appellate Courts are closed to the appellants. The appellee's have failed to produce an authentic promissory note with the appellants authentic signatures.[17] By the decision rendered below the appellants are being forced to recognize an obligation that no longer exists.[18]

By ignoring the existence of cancelled checks for July and August, 1983 payments, the Courts below are compelling appellants to satisfy an obligation twice.

In completely ignoring valid arguments presented by appellants concerning the September & October, 1983 payments the Courts are compelling appellants to satisfy an obligation which they do not have.[19]

The actions of the Court of the first instance in relying upon opposing counsel's opinion grossly violates the aforementioned amendments.[20]

The actions of the Court of the first instance in effect amending appellee's amended complaint cannot possibly stand under the mandates of the 5th and 14th Amendments.[21]

When the Court of the first instance allowed appellants to be harangued by opposing counsel for appearing pro-se and by its actions embracing the fact certainly does not constitute equal[22] protection or due process.[23]

The Court of the first instance refused to acknowledge the report

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[17]Ferris v. Nichols
[18]Ferris v. Nichols
[19]673.511 (3)(b)
[20]R 22, 23, 25, 26.
[21]R 9, 22, 23, 25, 26, 37; Cornell v. Sledge.
[22]R 24, 25, 26.
[23]A-VII.

from a qualified examiner of questioned documents and the existence of the July and August, 1983 payments which certainly constitutes genuine material factual issues grossly violated the guaranteed protections under the constitution.[24]

The actions of the appellate Courts below in refusing to address themselves to the constitutional questions raised and valid evidence submitted again denied the appellants their constitutional guarantees. The action of the appellate Court below in closing the doors of justice to the appellant in the face of a timely motion constitutes an abhorent violation of the 5th and 14th Amendments.

The actions of the appellate Courts below in changing on its own motion appellants valid Writ Error/Mandamus timely filed to an invalid motion for re-instatement certainly cannot stand in the face of the constitutional mandates. [25]

The actions of the appellate Courts below in not addressing a clear case of tampering with Court files which appellant proved certainly violates the mandates of the constitution.

The actions of appellate Court below in accepting fraudulent copies of the transcripts of the depositions that has been shown to be fraudulent certainly is a gross violation of due process and equal protection, and constitutes gross and invidious discrimination.

The appellants' rights as defined under VII amendment of the Constitution of the United States of America to a trial by jury has been grossly violated by the actions of the Courts below.

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[24]Fla. Rules Civ. Pro. 1.510 pg. 382
[25]Cornell v. Sledge.

APPENDIX A

SUPREME COURT OF FLORIDA
SUPREME COURT BUILDING
TALLAHASSEE 32301

Richard A. Kananen, Pro Se
7611 Alachua Street
Orlando, Florida 32822

January 24, 1986
Richard A. Kananen, et al.

v.

Case No. 67,916

I have this date received the below-listed pleadings or documents:

Received 1/23/86

We are returning your Motion for Rehearing as this case is final in this Court.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Clerk, Supreme Court

SJW/bh

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
MONDAY, JANUARY 13, 1986

RICHARD A. KANANEN, et al.,
Appellants,

vs.

SUN BANK OKEECHOBEE, etc.,
Appellee.

CASE NO. 67,916

District Court of Appeal, 4th District - No. 84-972

On consideration of appellant's motion writ of error and response thereto,

IT IS ORDERED by the Court that motion is treated as a motion for reinstatement and is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

C

cc: Hon. Clyde L. Heath, Clerk
Hon. Clifford Betts, Clerk
Hon. L. B. Vocelle, Judge

Richard A. Kananen
and Marilyn T. Kananen
John D. Cassels, Jr., Esquire

APPENDIX C

SUPREME COURT OF FLORIDA
WEDNESDAY, NOVEMBER 27, 1985

RICHARD A. KANANEN, et al.,
Appellants,

vs.

SUN BANK OKEECHOBEE, etc.,
Appellee.

CASE NO. 67,916

District Court of Appeal, 4th District - No. 84-972

It appearing to the Court that the District Court of Appeal, *Fourth* District, did not declare *invalid* a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion *filed* within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

BDM

C: Hon. Clyde L. Heath, Clerk
Hon. L. B. Vocelle, Judge
Hon. Clifford Betts, Clerk

Richard A. Kananen
Marilyn T. Kananen
John D. Cassels, Jr., Esquire

APPENDIX D

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

RICHARD A. KANANEN, et al.,
Appellant(s), CASE NO. 85-1531

vs.

SUN BANK OKEECHOBEE, etc.,
Appellee(s).

February 21, 1986

BY ORDER OF THE COURT:

The "Motion for Writ of Error Coram Nobis" and the "Motion Writ of Prohibition" attempted to be filed in these proceedings are sua sponte stricken.

The Mandate issued in this appeal on February 21, 1986. This Court has no further jurisdiction.

No papers of any kind will hereafter be accepted for filing in this closed appellate proceeding.

I hereby certify the foregoing is a
true copy of the original court order.

CLYDE E. HEATH,
Clerk

cc:

Richard and Marilyn Kananen, pro se

John D. Cassels, Jr., Attorney

cms

APPENDIX E

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

RICHARD A. KANANEN,
MARILYN T. KANANEN,
his wife, and SUNSHINE
CHEMICAL AND MFG., etc.,
Appellant(s),

vs. CASE NO. 85-1531

SUN BANK OKEECHOBEE f/k/a
COMMERCIAL BANK,
Okeechobee, Florida,
Appellee(s).

January 21, 1986

BY ORDER OF THE COURT:

ORDERED that the December 23, 1985 Motion for Rehearing and/or Clarification, filed by Appellants-Kananen, is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

CLYDE E. HEATH,
Clerk

cc:

Richard and Marilyn Kananen, pro se

John D. Cassels, Jr., Esq.

cms

APPENDIX F

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1985

RICHARD A. KANANEN,
MARILYN T. KANANEN,
his wife, and SUNSHINE
CHEMICAL AND MFG.,
Okeechobee, Florida

Appellants,

v.

SUN BANK OKEECHOBEE f/k/a
COMMERCIAL BANK,
Okeechobee, Florida,

Appellee.

NOT FINAL
UNTIL TIME
EXPIRES TO
FILE REHEAR-
ING PETITION
AND, IF FILED,
DISPOSED OF.

CASE NO. 85-1531

Decision filed December 18, 1985

Appeal from the Circuit Court for
Okeechobee County; William L. Hendry,
Judge.

Richard A. Kananen and Marilyn T.
Kananen, pro se, Orlando, appellants.

John D. Cassels, Jr., Okeechobee,
for appellee.

PER CURIAM.

AFFIRMED.

LETTS and GLICKSTEIN, JJ., and BOARDMAN, EDWARD F., Associate Judge (retired), concur.

APPENDIX G

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR OKEECHOBEE COUNTY, FLORIDA

CASE NO. 83-556-CA

SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE,

Plaintiff,

- *vs* -

SUNSHINE CHEMICAL AND MANUFACTURING OF OKEECHOBEE, RICHARD KANANEN & MARILYN KANANEN, his wife,

Defendants.

ORDER

THIS CAUSE having come on to be heard upon the Counter-Defendant, SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE'S Motion for Judgment on the Pleadings, Motion to Dismiss and Motion to Strike and the Court having heard argument of counsel and parties, and the Court having reviewed the Court file and the Pleadings involved thereto and being otherwise fully advised in the premise, it is

ORDERED & ADJUDGED

1. THAT the Counter-Defendant, SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE'S Motion to Dismiss is hereby granted as this Court determines the Counter-Complaint filed by the Counter-Plaintiffs does not comply with the Florida Rules of Civil Procedure and the Court further determines that said Counter-Petition is a sham pleading pursuant to Rule 1.150, Florida Rules of Civil Procedure. *LBV See Shotkin v. Cohen, 163 So2 330 (3rd D.C.A. 1969).*

2. THAT said dismissal is without prejudice to the Counter-Plaintiff to file an amended complaint within 45 days from the date of this Order. Upon failure of said Counter-Complainants to file an amended complaint within the time specified, said dismissal shall be deemed to be with prejudice.

DONE & ORDERED this 9th day of April, 1984, at Vero Beach, Florida.

HONORABLE L. B. VOCELLE

copies furnished:
John D. Cassels, Jr.
Richard & Marilyn Kananen

APPENDIX H

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR OKEECHOBEE COUNTY, FLORIDA

CASE NO. 83-556-CA

SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE,

Plaintiff,

- vs -

SUNSHINE CHEMICAL AND MANUFACTURING OF OKEECHOBEE, RICHARD KANANEN & MARILYN KANANEN, his wife,

Defendants.

SUMMARY JUDGMENT

THIS CAUSE having come on to be heard upon the Plaintiff, SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE'S Motion for Summary Judgment and the Court having heard argument of counsel and parties thereto and having reviewed the exhibits, evidence and being otherwise fully advised in the premise, it is

ORDERED & ADJUDGED

1. THAT the Plaintiff's Motion for Summary Judgment is hereby granted.

2. THAT Judgment is hereby entered in favor of SUN BANK OF OKEECHOBEE, f/k/a COMMERCIAL BANK OF OKEECHOBEE and against RICHARD A. KANANEN & MARILYN KANANEN, his wife in the amount of $9,418.86 together with interest at the rate of 12% per annum from November 18th, 1983 in the amount of $461.40 for a total principal and interest of $9,880.36.

3. THAT Jurisdiction of this cause is hereby reserved for the entry of taxable costs and attorneys' fees to be heard upon proper Motion.

4. FOR which sums let execution issue 45 days from the date of this Order.

DONE & ORDERED this 9 day of April, 1984, at Okeechobee, Florida.

HONORABLE L. B. VOCELLE

copies furnished:
John D. Cassels, Jr.
Richard & Marilyn Kananen

APPENDIX I

February 12, 1985

On Tuesday, February 12, 1985, I inspected the deposition of Marilyn Kananen taken on February 9, 1984. It seems to be the original. There are two copies of corrections attached, copies of same being attached and made part of this affidavit, same being initialed by me.

Gloria J. Ford
Clerk Circuit Court

CORRECTION SHEET

Page No.	Line No.	Correction
11	17	add: does not know what happened to Nov. & Dec. payments — Never returned to us.
12	15	add: changed due date from 5th to 25th by telephone at my request with Don Laurence, loan officer Commercial Bank — OK.

Please do *not* mark on the transcript. Thank you.

SECOND IDENTICAL PAGE OF CORRECTIONS

Page No.	Line No.	Correction
11	17	add: does not know what happened to Nov. & Dec. payments — Never returned to us.
12	15	add: changed due date from 5th to 25th by telephone at my request with Don Laurence, loan officer Commercial Bank — OK.

Please do *not* mark on the transcript. Thank you.

APPENDIX J

I hereby certify that there is not a "pink copy" of a promissory note in the record-on-appeal in the case of

Kananen v. Sun Bank Okeechobee.
District Court Case No. 84-972.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of Appeal, Fourth District, on the 16th day of January, 1986, at West Palm Beach, Florida.

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Supreme Court, U.S.
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No. 85-1740

In The

Supreme Court of the United States

October Term, 1985

RICHARD A. KANANEN and
MARILYN T. KANANEN,

Petitioners,

v.

SUN BANK OF OKEECHOBEE,
f/k/a/ COMMERCIAL BANK OF
OKEECHOBEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS' USE OF SUMMARY JUDGMENT PROCEDURE VIOLATES THE CONSTITUTIONAL RIGHT TO A JURY TRIAL OR OTHERWISE RAISES A SUBSTANTIAL FEDERAL QUESTION.

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STATEMENT OF THE CASE

The proper party Respondent in this case is Sun Bank of Okeechobee ("Sun Bank"), formerly known as Commercial Bank of Okeechobee, Florida. Sun Bank, N.A.,

and Sun Bank, Inc., were not parties below and have been erroneously named as Respondents by Petitioners.

The proceeding began as a suit by Sun Bank against Petitioners in the Circuit Court of the Nineteenth Judicial Circuit of Florida, seeking judgment on a promissory note against Petitioners. At a hearing on Sun Bank's motion for summary judgment, Petitioners admitted that the security for the note had been disposed of and that at least one payment on the note had not been timely made. (R. 37, 54, 63). Based on these admissions, the depositions of Petitioners and affidavits submitted by Sun Bank, the trial court entered a final summary judgment for $9,880.36 against Petitioners for the balance of the note and interest. (App. IX-X; references are to Petitioners' appendix).

Petitioners filed two separate appeals with the Fourth District Court of Appeal of Florida, case numbers 84-972 and 85-1531. As will be explained, Case 84-972 reached the Supreme Court of Florida and has now been brought before this Court. Nevertheless, Petitioners' appendix includes three orders from Case 85-1531: a *per curiam* affirmance (App. VI), a denial of a motion for rehearing (App. V), and a denial of motions for writs of prohibition and error *coram nobis* (App. IV). Case 85-1531 is not before this Court. In that appeal, Petitioners unsuccessfully argued that their privacy had been invaded, that venue should have been transferred, and that their counterclaim should not have been dismissed as a "sham pleading." No appeal to the Supreme Court of Florida was attempted in Case 85-1531.

In Case 84-972, Petitioners argued that the promissory note was a forgery and that the trial court failed to

credit them with all payments made on the note. The sole constitutional argument raised in their initial brief in that proceeding consists of one sentence:

> Kananen's still demand a trial by jury as guaranteed by the Constitution State of Florida, Article I, Section II, and Article I, Section IX and under the Constitution of the United States of America, XIV Amendment.

Petitioner's reply brief in that proceeding also made the following "constitutional" argument:

> The Kananen's have not received due process nor equal protection which will be proved in related cases. The Kananen's are demanding a full investigation of the prostitution of the Court file in the Ninteenth [sic] Circuit. The Kananen's will also prove that the transcripts of all hearings have been either sanitized or a fantasy of some one's imagination. Unfortunately for Sun Bank the words "genuine and material" will stand four square against them. The cancelled checks, the complaint issued by Sun Bank as amended and the forged contract are all "genuine and material" facts that are in controversy.

The Fourth District Court of Appeal of Florida affirmed the final summary judgment, *per curiam* and without an opinion on September 25, 1985. Rehearing was denied and Petitioners then appealed to the Supreme Court of Florida. That appeal was dismissed for want of jurisdiction as no state statutory or constitutional provision had been declared invalid by the district court of appeal, as required by Article V, Section 3(b)(1), Florida Constitution. (App. III). Petitioners then filed a "motion for writ of error" in the Supreme Court of Florida, which treated that motion as a motion for reinstatement and

denied it on January 13, 1986. (App. II). The petition for writ of certiorari is apparently directed at this final dismissal of the appeal.

SUMMARY OF THE ARGUMENT

Petitioners raised no substantial federal question in the state court. Even if their *pro se* efforts are liberally construed, the sole arguable issue raised below is whether summary judgment constitutes a denial of the right to trial by jury. There simply is no right to trial by jury when there are no disputed material facts. *Fidelity & Deposit Co. of Maryland v. United States*, 187 U.S. 315, 320, 23 S. Ct. 120, 122, 47 L. Ed. 194, 198 (1902).

REASONS FOR DENYING THE WRIT

THE COURTS' USE OF SUMMARY JUDGMENT PROCEDURE DOES NOT VIOLATE THE CONSTITUTIONAL RIGHT TO A JURY TRIAL NOR DOES IT OTHERWISE RAISE A SUBSTANTIAL FEDERAL QUESTION.

The Kananens' petition attempts to present twenty separate issues for review, but essentially a single argument is made: that the trial court disregarded the "evidence" of Petitioners in granting summary judgment.

Rule 1.510, Florida Rules of Civil Procedure, sets forth the summary judgment procedure for Florida courts.

It approximates Rule 56 of the Federal Rules of Civil Procedure and permits resolution of an action upon affidavits and depositions if they establish that there is no dispute of material fact and that the moving party is entitled to judgment as a matter of law. Petitioners have failed to assert how this procedure was abused below, particularly (as previously noted) when their own depositions and statements at the hearing established their liability on the note.

Arguably, Petitioners raised a constitutional question below by asserting that the summary judgment procedure itself is a denial of the right to trial by jury. However, this cannot be considered a substantial federal question.

This Court has previously held that the summary judgment rule does not deprive a litigant of the right to trial by jury. As stated by this Court in 1902:

> It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues. The purpose of the rule is to preserve the court from frivolous defences and to defeat attempts to use formal pleading as means to delay the recovery of just demands.

Fidelity & Deposit Co. of Maryland v. United States, 187 U.S. 315, 320, 23 S. Ct. 120, 122, 47 L. Ed. 194, 198 (1902). *See also, Port of Palm Beach District v. Goethals*, 104 F.2d 706, 709 (5th Cir. 1939).

Petitioners simply have failed to raise a question which is properly reviewable by this Court on a petition for a writ of certiorari.

———o———

CONCLUSION

The petition for writ of certiorari should be denied for want of a substantial federal question.

Respectfully submitted,

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SUN BANK N.A.
SUN BANK, INC.

Respondent.

ON WRIT OF CERTIORARI
TO SUPREME COURT STATE OF FLORIDA
FOURTH DISTRICT COURT OF APPEAL;
STATE OF FLORIDA

REPLY BRIEF OF PETITIONERS

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RESPONDENTS BRIEF IN OPPOSITION TO PETITION SHOULD BE STRICKEN

On the cover of the brief in opposition the respondents have deleted two of the respondents and the Fourth District Court of Appeal. Therefore, the brief does not address itself to the case as docketed, and does not conform to the rules of this Court and should be stricken.

RESPONDENTS REFUSE TO RELATE TO THE FACTS TRUTHFULLY

Attorney for respondent as retained by Sun Bank N.A., and Sun Bank, Inc. and acting as their attorney a motion to dismiss petitioners counterclaim as entered into the Nineteenth Circuit. All subsequent pleadings by both sides have named Sun Bank N.A., and Sun Bank, Inc. as parties to the action. The promissory note and affidavits pertaining to summary judgment (R40) were submitted to the Court five hours after the hearing for summary judgment, Petitioners were not afforded the opportunity to refute them at summary judgment. However, subsequently the promissory note was determined to be a forgery. Summary judgment was issued solely on the allegation of a late payment September, 1983, when Petitioner Richard Kananen was scheduled for open heart surgery and was incidentally the fortieth payment. This court has the record from the Supreme Court of State of Florida. It can be readily seen that plaintiff's pleas to the court on their constitutional guarantees were being violated, and Motion Error compiled with F.R.A.P. in that in the body it states it may be treated as a writ of mandamus conveying upon the Supreme Court State of Florida original jurisdiction.

Respondents relied upon 1.150 F.R.C.P. to convey jurisdiction of summary judgment in the nineteenth circuit. However, 1.150 F.R.C.P. is sham pleadings. RESPONDENTS LABELED THEIR OWN MOTION CORRECTLY.

RESPONDENT MISCONCEIVES THE REQUIREMENTS OF THE MANDATES OF THE CONSTITUTIONAL AMENDMENTS QUOTED

Apparently respondent believes that the petitioners are some how excluded from the protection and guarantees of the constitution.

RESPONDENT MISCONCEIVES THE STATE REQUIREMENTS 1.510 F.R.C.P.

Prevailing law and its interpretation is clear. Any material factual issue in dispute precludes issuance of summary judgment.

RESPONDENT MISCONCEIVES UNIFORM COMMERCIAL CODE

Respondent can only recover on an authentic promissory note. Forgeries clearly preclude any hope of recovery.

RESPONDENT MISCONCEIVES WHAT CONSTITUTES MATERIAL FACTUAL ISSUE

The existence of the cancelled checks for July and August, 1983, and the fact that the respondents cannot produce an authentic promissory note and has only submitted forgeries are clearly material factual issues in dispute.

RESPONDENT MISCONCEIVES OWN CITATION

In Port of Palm Beach District v. Goethals, 104 F 2d 706 (5th Cir. 1939): the court clearly states in note 14

> "A summary judgment in a case at law which a jury has been demanded should not be granted unless the truth is clear."

RESPONDENT MISCONCEIVES WHICH AMENDMENT IS TRIAL BY JURY

This is covered under the VII Amendment to the Constitution of the United States of America.

RESPONDENT MISCONCEIVES THE ORDER OF THE FOURTH DISTRICT COURT OF APPEAL

By the order of the Fourth District Court of Appeal, 84-972 and 85-1531 were united as they should be.

RESPONDENT MISCONCEIVES THE PETITION OF WRIT OF CERTIORARI

There are questions raised directed at 85-1531 which in fact directed the petition of writ of certiorari to be directed to the Fourth District Court of Appeal, State of Florida.

CONCLUSION

It should be clear that there is not one legal piece of evidence to sustain the respondents action. All evidence in the instant case is in favor of petitioners. The respondents have failed to truthfully refute any of the allegations set forth by the petitioners.

Therefore the writ of certiori should issue.

The petitioners pray this court will grant the petition on writ of certiorari.

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